

NORTH CAROLINA
DURHAM COUNTY

LEASE OF NON-RESIDENTIAL PROPERTY

This Lease is made as of the _____ day of _____, 20__ between the City of Durham, a municipal corporation, hereinafter referred to as "Landlord", and the Durham Regional Association of REALTORS, Inc., hereinafter referred to as "Tenant".

WITNESSETH:

That the Landlord in consideration of the agreements and covenants hereinafter mentioned to be fulfilled by the Tenant, does hereby demise and lease to the Tenant an unimproved parcel located at 4238 University Drive, Durham, NC 27707 Parcel ID # 195741 described as follows, hereinafter referred to as "Premises":

City Tract 1635, Lot 2

Beginning at a monument at the intersection of the northern right of way of University Drive and the eastern right of way of Martin Luther King, Jr. Parkway; thence along and with said eastern right of way of Martin Luther King, Jr. Parkway N 54-01-55 W a distance of 420.73 feet to a monument; thence N 33-46-13 W a distance of 363.44 feet to a monument; thence N 15-29-41 E a distance of 49.91 feet to a iron pin; thence departing Martin Luther King, Jr. Parkway S 43-14-57 E a distance of 337.00 feet to a iron pin; thence S 67-12-28 E a distance of 210.00 feet to a iron pin; thence S 60-01-06 E a distance of 107.00 feet to a iron pin; thence S 55-15-53 E a distance of 160.00 feet to a iron pin, said iron pin being on the northern right of way of University Drive; thence along said northern right of way S 43-30-24 W a distance of 173.54 feet to a monument, the point and place of beginning and containing 2.13 acres.

For further description, see map entitled **Exhibit A, Subdivision Map for City of Durham City Tract No. 1635** prepared by City of Durham Public Works Department, Engineering Division, Donald F. Greeley, Professional Land Surveyor L-3472, dated February 25, 2003, which is recorded in the Durham County Register of Deeds in PB 158, page 45.

1. TERM. This Lease has a term of five years and shall begin on the 6th day of January, 2016, (hereinafter called the "beginning date"). The term, unless extended or sooner terminated as herein provided, shall exist and continue for five (5) years from the beginning date. This Lease may be terminated by the Landlord upon ninety (90) days written notice for transportation or right of way needs.

2. EXTENSION OF LEASE TERM. Tenant may extend the term by an additional five (5) years, by sending notice to the Landlord at least one hundred and eighty (180) days before the expiration of the term and by mutual agreement/consent of both parties.

3. RENT. The Tenant shall pay to the Landlord as rent the sum of \$3,733.20 per year, which shall be paid in advance, in annual installments on, or before the anniversary of the

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beginning date of this Lease, as set forth in Item 1, above. The rent payment amount shall escalate 2% each year in years 2 through 10 of this lease as shown on **Exhibit B, Rental Schedule** attached hereto and made a part hereof. If this Lease is terminated for any reason other than a default by the Tenant, the Landlord shall refund to the Tenant within thirty (30) days after the date of termination the pro rata amount of prepaid rent for the balance of the year in which such termination occurs.

4. **USE AND CARE OF PREMISES.** The Premises shall be used only for the purpose of providing off street parking by the Tenant and lessees of Tenant using its building adjacent to the Premises ("Lessees"), and Tenant's employees, agents, contractors and invitees, including the third party invitees of Tenant's agents and lessees' agents and invitees

5. **ASSIGNMENTS AND SUBLETTING.** The Tenant may neither assign nor sublet any of their rights in or any part of the Premises without the written consent of the Landlord, which shall not be unreasonably withheld. The Tenant shall remain liable to the Landlord under this Lease regardless of assignments or subleases.

6. **ALTERATIONS AND IMPROVEMENTS:** The Landlord gives the Tenant and its agent or contractor permission to grade the site and construct and maintain a parking lot in accordance to a site plan approved by the City-County Planning Design Review Board. Upon expiration of the Lease such improvements will become property of the Landlord.

7. **INSURANCE.** The Tenant shall maintain commercial general liability insurance coverage, with a liability limit of \$1,000,000 for all activities undertaken in connection with the Tenant's use of the Premises. This insurance shall provide coverage for premises/operations, products/completed operations, independent contractors, and contractual liability. The City shall be named as an additional insured on each such insurance policy. The Tenant shall also maintain Workers' Compensation insurance coverage as required by law. Tenant shall provide a certificate of insurance evidencing compliance with these requirements. The insurer shall agree to a notice requirement of thirty (30) days prior to cancellation or reduction of coverage.

8. **INDEMNIFICATION.** (a) To the maximum extent allowed by law, the Tenant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Lease or out of the use or occupancy of the Premises pursuant to this Lease, including for Environmental Contamination caused by the Tenant, its employees, agents, contractors and/or invitees, including the third party invitees of Tenant's invitees. In performing its duties under this subsection "a", the Tenant shall at the Tenant's sole expense defend Indemnitees with legal counsel reasonably acceptable to the Landlord. (b) Definitions. As used in subsections "a" and "c" of this section -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "Environmental Contamination" means petroleum products (including oil, gasoline, and kerosene), hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic wastes, hazardous air pollutants, and toxic pollutants, as those terms are used in any federal, state, or local laws, rules, regulations, codes, and ordinances, as amended from time to time. "Indemnitees" means the Landlord and its

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officers, officials, independent contractors, agents, and employees, and does not include the Tenant. (c) Limitations of the Tenant's Obligation. Subsection "a" of this section shall not require the Tenant to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

9. NOTICE OF CLAIMS. If the Tenant receives any notice or document which purports to establish, claim or inquire as to Tenant's or the Premises' non-compliance or violation of State or Federal statute, Tenant shall, within ten (10) days after receipt of such notice or document, provide Landlord with a copy.

10. TERMINATIONS, CASUALTY, AND EMINENT DOMAIN. (a) If the term ends early, and if the Tenant has paid rent in advance, it shall be entitled to a pro-rata refund for the rent attributable to the time after the end of the term. (b) If fire or other casualty renders the Premises uninhabitable, and if the casualty is not the fault of the Tenant or any person for whose acts or omissions the Tenant is liable, and if the Landlord cannot or does not make the Premises reasonably useable for the Tenant's purposes within ten days afterwards, the Tenant may, by sending notice to the Landlord within fifteen days of the casualty, terminate the term effective as of the date of the casualty. (c) If fire or other casualty substantially damages the Premises, and if the casualty is not the fault of the Tenant or any person for whose acts or omissions the Tenant is liable, and if the Landlord cannot or does not substantially repair the Premises within twenty days afterwards, the Tenant may, by sending notice to the Landlord within twenty-five days of the casualty, terminate the term effective as of the date of the casualty. (d) If fire or other casualty renders the Premises unusable for the Tenant's purposes, the Landlord may, by sending notice to the Tenant within twenty days of the casualty, terminate the term effective as of the date of the casualty. (e) If an authority with the power of eminent domain acquires an interest in the Premises that substantially affects their use for the Tenant's purposes, the Tenant may, by sending notice to the Landlord within thirty days of the taking of possession by the authority, terminate the term effective as of the date of the taking of possession by the authority. (f) Each subsection of this section is intended to be independent of the other subsections of this section. (g) The Tenant may cancel this agreement by giving the Landlord ninety (90) days written notice.

11. WAIVER. The Landlord's failure to enforce, waiver of, or consent to any condition, covenant term, or right arising under this instrument shall not constitute a waiver of the right to enforce that condition, covenant, term or right afterwards, unless the Landlord so provides expressly in writing.

12. SURRENDER OF THE PREMISES. At the end of this Lease, all improvements to the Premises made by the Tenant shall become the property of the Landlord. No compensation shall be payable to the Tenant for any such improvements.

13. ADA. If Tenant receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Premises, or (ii) which pertains to

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any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged noncompliance with the ADA, Tenant shall, within ten (10) days after receipt of such notice or document, provide the Landlord with a copy.

14. **MEMORANDUM.** Upon request of either party, the other party shall execute this lease and a memorandum of lease in a form that may be recorded in the office of the Register of Deeds.

15. **ADDRESSES. NOTICES.** Notices to the Tenant shall be in writing and sent to it at the address of the Premises. Notices to the Landlord shall be in writing, and such notices and rent payments shall be sent to:

Landlord: General Services Department
Real Estate Division
City of Durham
101 City Hall Plaza
Durham, NC 27701

Tenant: Durham Regional Association of REALTORS, Inc.
4236 University Drive
Durham, NC 27707

16. **E-Verify requirements.** (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

IN WITNESS WHEREOF, the City and the Lessee have caused this Lease to be executed under seal themselves or by their respective duly authorized agents or officers.

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ATTEST:

CITY OF DURHAM

City Clerk

By: _____
City Manager

ATTEST:

DURHAM REGIONAL ASSOCIATION OF
REALTORS, INC.

Secretary
[Please affix corporate seal here.]

By: _____
President

State of North Carolina ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared
before me this day and stated that he or she is _____ Secretary of

_____, a corporation, and that by authority duly given and as the act
of the corporation, the foregoing lease agreement with the City of Durham was signed in its
name by its _____ President, whose name is

_____, sealed with its corporate seal, and attested
by him/herself as its said Secretary or Assistant Secretary. This the _____ day of
_____, 20_____.

My commission expires:

Notary Public

ACKNOWLEDGEMENT BY CITY OF DURHAM

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, _____, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day, and acknowledged that she is _____ Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing lease was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 2015.

My commission expires:

STATE OF _____

ACKNOWLEDGEMENT

COUNTY OF _____

This the _____ day of _____, 2015.

Notary Public

My commission expires:
